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No. 801

IN THE

Supreme Court of the United States

INTERNATIONAL HARVESTER CREDIT CORPORATION, et al., *Appellants*,

v.

ALLEN J. GOODRICH, et al., *Appellees*.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Court of Appeals of the State of New York entered on December 31, 1954, sustaining the validity, under the United States Constitution, of Section 506 of Article 21 of the New York Tax Law. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial Federal questions are presented.

OPINIONS BELOW

The New York Court of Appeals affirmed without a majority opinion the judgment of the Appellate Division of the Supreme Court of New York. The dissenting opinion in the New York Court of Appeals is annexed hereto as Appendix A. The opinion of the Appellate Division of the Supreme Court of New York dated July 8, 1954, which was reviewed and affirmed by the Court of Appeals is annexed hereto as Appendix B. It is reported at 284 App. Div. 604, 132 N.Y.S. 2d 511.

JURISDICTION

The judgment of the Court of Appeals was entered on December 31, 1954. On March 18, 1955, notice of appeal to this Court was served on appellees and filed in the Appellate Division of the Supreme Court of New York, Third Department, the Court now possessed of the record herein.

The jurisdiction of this Court to review said judgment is conferred in Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this case: *Nashville, Chattanooga & St. Louis Railroad* v. *Walters*, 294 U.S. 405; *Myles Salt Company* v. *Iberia Drainage Board*, 239 U.S. 478; *Thomas* v. *Kansas City & Southern Ry. Co.*, 261 U.S. 481; *Smith* v. *Cahoon*, 283 U.S. 553; *Frost* v. *Corporation Commission*, 278 U.S. 515.

QUESTION PRESENTED

Whether Article 21 of the Tax Law of the State of New York imposing a highway use tax is consistent with the Due Process clause of the Fourteenth Amendment to the Constitution to the extent that it author-

izes in Section 506 the taking of appellant's property in vehicles, of which it was the conditional vendor to an operating carrier and taxpayer, to satisfy all fees, taxes, penalties and interest accruing against the operating carrier, without regard to the origin of such tax liabilities or the identity of the vehicles by whose use the tax liabilities were created.

STATUTES INVOLVED

Sections 503 and 506 of Article 21 of the New York Tax Law are set forth in Appendix C.

STATEMENT

Pursuant to Section 546 of the New York Civil Practice Act, this controversy was submitted on a stipulated statement of facts to the Appellate Division of the Supreme Court of the State of New York, Third Department, on June 8, 1954 (R. 1-15). Appellants' contention, as stated in that Submission and Statement of Facts (R. 11-13), included the claim that Section 506 of Article 21 of the New York Tax Law was invalid and unenforceable under the Fourteenth Amendment of the United States Constitution. The Appellate Division passed on this question and held that the provision in question was valid under the United States Constitution (R. 28, 33). An appeal to the New York Court of Appeals was taken as of right, under Section 588 (1) of the New York Civil Practice Act, on the ground that the case directly involved the construction of the United States Constitution (R. 20). The Court of Appeals affirmed (R. 40).

In 1953 International Harvester Company and appellant Brockway Motor Company, Inc. (hereafter Brockway) sold three tractors (*i.e.*, the automotive portion of a tractor-trailer) to Eastern Cartage and

Leasing Co., Inc. (hereafter Eastern). (R. 4, 5, 7). In each sale, appellants took a valid conditional sales agreement, reserving the title in the vehicles in themselves as security for payment of the purchase price. The conditional sales agreement pertaining to the two tractors sold by International Harvester Company were assigned to appellants International Harvester Credit Corporation (hereafter International) (R. 4, 6). On January 22, 1954, International replevied the two tractors from Eastern for default in payment of the balance then due, amounting to $4,578.79 on each tractor (R. 5, 8). Both tractors were repossessed and purchased at public sale by International on February 16, 1954, for $3,500 each (R. 5, 8). On March 26, 1954, Brockway repossessed the tractor which it had sold to Eastern for default in the payment of $5,625 (R. 6). It is stipulated that the value of this tractor at the time of repossession did not exceed $5,625 (R. 6). On March 17, 1954, International sold one of the tractors to Philomena Colafemina of Schenectady, New York, and warranted that the tractor was free from any charge or encumbrance (R. 5). On the same day, International sold the other tractor to a Massachusetts corporation for operation outside the State of New York. (R. 8). Brockway still possesses the tractor which it repossessed from Eastern (R. 6).

More than a month later, on April 21, 1954, appellees, for the first time, asserted that a lien amounting to $3,698.04 attached to each of the two tractors then in the State of New York, and to the $4,300 which International had received in payment for the tractor which had been sold to the Massachusetts corporation (R. 6). It developed that Eastern, a carrier subject to the highway use tax imposed by Article 21 of the New York Tax Law, had become delinquent in filing

its return and paying its taxes prior to its purchase of the three tractors from appellants, and that, due to its entire course of operations from January 1952 to February 1954, Eastern was liable for taxes, penalties and interest aggregating $3,698.04 (R. 3-4). These taxes were levied on Eastern for the operation of at least 15 motor vehicles on the public highways (R. 3). At the time of the conditional sale of the three tractors by appellants to Eastern, appellees had taken no action with respect to the taxes in question.

Article 21 of the New York Tax Law imposes a highway use tax "for the privilege of operating any vehicular unit upon the public highways" of New York. Sec. 503. This use or privilege tax is imposed "upon the carrier except that where the carrier is not the owner . . . the tax shall be a joint and several liability upon both the owner and the carrier." Sec. 503. The highway use tax is measured by the number of vehicles and the weight and amount of highway use of each vehicle. The carrier and the owner are under a duty to keep records and make returns. Failure to fulfill such duties calls for the imposition of penalties. It is further required that all reports and returns made under Article 21 be kept secret, as is the lien which is not required to be filed or recorded. Sec. 514. Thus, it was impossible for appellants to have had any knowledge of Eastern's tax delinquency at the time of the conditional sales by them to Eastern.

All taxes, fees, penalties and interest become a prior lien upon every vehicle operated by delinquent carrier. The lien attaches to any vehicle the moment it is operated on the public highway by the carrier. Thus, once the tax accrues as to any vehicle operated by the carrier, it becomes a prior charge upon all vehicles operated by the carrier irrespective of ownership. The

lien is expressly made "paramount to all prior liens and encumbrances of any character and to the rights of any holder of the legal title in or to any such motor vehicle or vehicular unit". Sec. 506.*

According to the stipulation of facts (R. 6), the amount of the lien asserted against each of the three tractors owned by appellants includes:

> "(a) taxes incurred as a result of the operation of the three motor vehicles purchased from the respective plaintiffs as herein set forth, (b) taxes incurred as a result of the operation of other motor vehicles purchased from the respective plaintiffs and from others, (c) taxes for periods both prior and subsequent to the purchase of the aforesaid motor vehicles by Eastern from the plaintiffs, (d) taxes for periods prior to the repossession of said motor vehicles by plaintiffs which were assessed prior to such repossession, (e) taxes for periods prior to the repossession of said motor vehicles by plaintiffs which were assessed subsequent to such repossession, and (f) taxes for periods subsequent to the repossession of said motor vehicles by plaintiff International." **

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* Appellees concede that neither appellant could have limited its liability by filing appropriate returns as owner of the vehicles which were then being used by Eastern, and thus limiting its liability to the tax which accrued from the use of the vehicles which each owned. The Attorney General of New York ruled, on June 15, 1954, that neither conditional vendors nor chattel mortgagees could be taxed as the "owners" of the vehicles involved. Thus appellants are required to assume the responsibility for paying the greater tax assessed against all of the vehicular property of the carrier.

** Appellees now concede, however, that amounts included under (f)—i.e., tax liabilities of the carrier accruing after a conditional vendor repossesses a vehicle from a delinquent carrier—should not be included within the lien on that vehicle. See R. 28.

THE FEDERAL QUESTION IS SUBSTANTIAL

Eastern's tax liability arose from the operation of at least 15 tractors and trucks on the highways of New York for a period of over two years from January 1952 through February 1954. During this period, Eastern's vehicles traveled many miles on the roads of New York with consequent damage to the roads and benefit to Eastern. There is no doubt that the taxes paid by Eastern for use of the highways related directly to benefits received by Eastern. But during this period, neither of the appellants owned any vehicles operating for their profit on the highways of New York. Regardless of this, appellees are asserting a charge against each of the three vehicles owned by appellants, but operated for profit by Eastern, for the full amount of the taxes assessed against Eastern for the operation of all of its tractors and trucks during the entire two-year period.

We can safely start with the assertion that it is at least novel thus to seize a non-taxpayers's property to pay the unrelated taxes of a taxpayer. Eastern, the taxpayer, concededly had no property interest in the tractors at the time the lien was asserted; the tractors were the property of appellants. It is likewise stipulated that the charges assessed against appellants' property bear no relation either to the operation of appellants' tractors by Eastern, or to the equity interest which Eastern had in the tractors under the conditional sales contracts. In fact, most of the taxes in question had already accrued against Eastern before appellants' tractors were "even manufactured" (R. 37, See App. 1a).

The extraordinary nature of what has been sanctioned by the court below is perhaps best expressed by way of analogy. Let us assume that Eastern had owned 15 houses, and that International held a mortgage on

house No. 1. The water rents payable for house No. 1 would, of course, be a lien prior to International's mortgage. We doubt that it would be seriously urged, however, that the water rents on the other fourteen houses, after Eastern's failure to pay them, could validly become a lien on house No. 1 prior to International's mortgage. Yet, that is the claim here—that appellants, as conditional vendors of three tractors, can be compelled to pay the entire amount due from Eastern for the use of all of its other vehicles.

We do not deny the power of a state to seize any of a tax debtor's property to pay the tax debt. We do deny that a state may, as in this case, make a conditional vendor liable indiscriminately and without reference to the property concerned for all taxes accrued by a conditional vendee. Section 506, which purports to do so, we believe violates the Due Process clause of the Fourteenth Amendment.

Due process is concerned with whether a tax in practical operation has relation to opportunities, benefits or protection conferred or afforded by the taxing state. *Ott* v. *Mississippi Barge Line Co.*, 336 U.S. 169. Although the older cases hold that the taxpayer must derive some direct benefit with respect to the assessment of property taxes, *Thomas* v. *Kansas City & Southern Ry. Co.*, 261 U.S. 481, the Court has come to require only that there must be "some relation" to the advantages or benefits to be secured. *Nashville C. & St. Louis Ry. Co.* v. *Walters*, 294 U.S. 405. The benefit need not be direct, but nevertheless the Court has not abdicated the position that there must be some benefit. *Myles Salt Co.* v. *Iberia Drainage Board*, 239 U.S. 478.

Article 21, as here applied to appellants, fails to meet that test. The purpose of Article 21 is to relate

the cost of repairing and maintaining roads more directly to those who contribute most to deterioration of the roads, and who presumably reap the greater share of their benefits. The very fact that the State of New York has seen fit to create this type of highway use tax, instead of continuing to pay for highway repairs out of more general levies, indicates that the State feels that the greatest benefits accrue to carriers. The stated purpose of Article 21 is to—

> "distribute more equitably [the] financial burden [of maintaining public highways] and to compensate the state in part for the privilege granted to such heavy vehicles of using the highways of the state and for the cost of administering state traffic regulations." (N. Y. Laws 1951, c. 74, § 1)

The benefit stemming from the imposition of the tax is thus derived by those who operate commercial vehicles for profit on the public highways of New York. Appellants are not in that category. Nor, as to them, may the tax be sustained on the ground that they derive a benefit in the sense that the business of selling tractors and trucks is dependent upon the maintenance of highways for the tractors and trucks to use. It might also be asserted that filling station and garage owners derive a similar benefit, since if there were no highways there would be no tractors and trucks to repair. In fact, of course, vendors and repairers of tractors and trucks would benefit more from less well-maintained highways which would hasten the deterioration of such vehicles. In short, the vendors of tractors and trucks receive no more benefit from the highway use tax than do hosts of others who are engaged in the wide variety of businesses which are today dependent on automotive transportation.

We do not doubt, of course, that the State of New York may support its public highway system by general taxation. When it abandons that pattern of taxation, however, and levies a specific use charge, the charge must reasonably relate to value received for use of the facilities charged for. *Ingels* v. *Morf*, 300 U.S. 290. So long as the tax is levied for highway purposes, it is "valid unless the amount is shown to be in excess of fair compensation for the privilege of using state roads". *Capitol Greyhound Lines* v. *Brice*, 339 U.S. 542, 547. Here, however, it is not even alleged that appellants have ever exercised the privilege of using the roads of New York at all. Appellants, in other words, who do not exercise the "privilege of using state roads" themselves, face the virtual confiscation of their three tractors to satisfy the tax liabilities of Eastern, most of which arose from Eastern's exercise of that privilege with a large fleet of trucks and tractors with which appellants had no connection whatever.

When a street is paved, the cost is apportioned and made a lien against the property which receives the benefits. Such a lien has priority over existing liens. But the mortgagee of one house cannot be compelled to pay the cost of paving the entire street simply because the mortgagors of all of the other houses fail to pay their proportionate share.

> "[A]ny attempt by a state to measure the tax on one person's property . . . by reference to the property . . . of another is contrary to due process of law as guaranteed by the Fourteenth Amendment." *Hooper* v. *Wisconsin*, 284 U.S. 206, 215; *Knowlton* v. *Moore*, 178 U.S. 41.

In an attempt to support this patent inequity, appellees assert the convenience of the State—an argument not unfamiliar in attempts to support unfair State action when it is challenged on due process grounds. The purpose of the enforcement provisions of Article 21 is of course to ensure that the highway use tax will not go unpaid—that it will be paid by someone. Aside from convenience, however, there is no connection between appellants' property and the amount of the lien. No doubt New York would find it less convenient to apportion the taxes by limiting the charges for unpaid highway use taxes to the property which Eastern possessed in the tractors at the time the taxes were assessed, or to the taxes which had actually accrued from the operation of the three vehicles. But convenience alone is no answer. Absent a definable benefit and a reasonable relation to appellants, their property may not be taken to satisfy New York's convenience. Indeed it can be added that the experience of other States with ton-mile highway use taxes illustrates that the enforcement provisions which are here challenged are not necessary to the collection of such a tax. Of the eleven States which impose such taxes,* apparently only New York has attempted a collection device which permits not only the manifest unfairness of the present case, but indeed would permit the same result had appellants allowed Eastern the use of the tractors as a mere gratuity.

Nor can appellees succeed in defending Article 21 by the assertion that the sovereign has the prerogative right of priority. *Shaffer* v. *Carter*, 252 U.S. 37. Only on a superficial view can the statute be said to enforce the State's prerogative right of priority. We assume

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* New York, Florida, Colorado, Alabama, Oregon, Ohio, Idaho, South Carolina, Wyoming, North Dakota and Michigan.

that the State of New York has exercised the full scope of its prerogative of priority, but that prerogative is concerned with seizure of a debtor's property subject to the interests of creditors. It is *not* concerned with the seizure of the property of the creditors themselves. Here the property belonged to appellants at the time the taxes were due and the liens attached. The decision in *Marshall* v. *New York*, 254 U.S. 380, of which much was said below, is wholly beside the point.

Finally, as already noted, the unfairness of the enforcement procedures which appellees seek to invoke is compounded by the additional fact that appellants could not learn of Eastern's tax deficiency. The secrecy provisions of Article 21 in effect when the claim against appellants was asserted (they have since been repealed; N. Y. Laws of 1955, c. 165, 193) made it legally impossible for a vendor to discover whether a prospective purchaser is in any sense delinquent in the payment of his taxes.

The issues here involved present substantial questions of paramount importance to industrial vendors of commercial vehicles in New York. Unless the prospective purchasers are able to make immediate payment in cash, the vendor becomes immediately liable for the purchaser's prior taxes. One mile of highway use by the vehicle, which involves a tax liability of less than one cent to the purchaser, can result in a practical tax liability to the vendor of many thousands of dollars.

Certainly vendors should not be required to sell for cash, or not at all, to avoid this liability. Normal and customary business practices in this industry require the retention of a security interest by vendors who do

not sell on a strictly cash basis. The statute in question, as construed by the holding below, effectively precludes the retention of such a security interest.

CONCLUSION

Appellants respectfully suggest that this appeal brings before this Court a Federal question which is far-reaching and important, both in terms of legal principles and of practical impact upon the vendors of commercial vehicles throughout much of the country; and that enough has been said to demonstrate that the question is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for proper resolution.

Respectfully submitted,

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